

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7450 OF 2016
(CONVERTED FROM C.R.A.NO. 571 OF 2015)**

Shri Kalam Abdul Hamid Kazi

..Applicant

Vs

Arun Manaji Bhalerao

.. Respondent

Mr. Vaibhav Gaikwad, Advocate for Applicant.

Mr. Anand Lawate i/b Sandeep R. Waghmare, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 29/06/2016

PC:

1. Heard Mr. Gaikwad, learned counsel for the applicant and Mr. Anand Lawate, learned counsel for the respondent at length.
2. Rule. Mr. Lawate waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up finally.
3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant', has challenged the Judgment and decree dated 15.7.2015 passed by the learned District Judge -22, Pune in Civil Appeal No.108 of 2014. By that order, the learned District Judge allowed the Appeal preferred by the respondent, hereinafter referred to as 'plaintiff', and quashed and set aside the Judgment and decree dated 2.1.2014 passed by the learned Addl. Judge of the Small Causes Court Pune in Civil Suit No.511 of

2012. The learned District Judge decreed the suit and directed the applicant, hereinafter referred to as 'defendant', to deliver possession of the suit premises to the plaintiff within two months from the date of the order, failing which the plaintiff may get it through the process of Court.

4. In view of Section 7 of C.P.C., leave to convert this Civil Revision Application into Writ Petition is granted. Amendment shall be carried out forthwith.

5. Mr. Gaikwad invited my attention to the points framed by the learned trial Judge. The learned trial Judge, while answering point no.1, held that the plaintiff failed to prove his relationship with the defendant as landlord and tenant of the suit premises. While answering point no.2, the learned trial Judge held that the plaintiff proved that he requires the suit premises reasonably and bona fide for himself and for his family for residence. The learned trial Judge also held that greater hardship will be caused to the plaintiff in the event of refusal to pass eviction decree. As the plaintiff failed to establish relationship of landlord and tenant between the parties, the learned trial Judge dismissed the suit.

6. He submitted that aggrieved by the decision, the plaintiff preferred appeal. Mr. Gaikwad invited my attention to paragraphs 7, 8 and 22 and submitted that the learned District Judge committed serious error in holding that as the defendant did not

file either cross objection or cross appeal, he is precluded from challenging the findings recorded by the trial Court against points no. 2 and 3.

7. Mr. Lawate submitted that by consent, the impugned order may be set aside and the Appellate Court may be directed to dispose of the Appeal in a time bound manner.

8. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

(i) Impugned order dated 15.7.2015 passed by the learned District Judge in Civil Appeal No.108 of 2014 is quashed and set aside. Civil Appeal No.108 of 2014 is restored to the file of the learned District Judge. The defendant is permitted to challenge the findings recorded by the learned trial Judge against points no. 2 and 3 without filing either cross objections or cross Appeal.

(ii) Parties agree that they will appear before the learned District Judge on 4.7.2016 and for that purpose no fresh notice be issued to them. The learned District Judge is requested to dispose of the Appeal as expeditiously as possible and preferably within three months from production of the authenticated copy of the order. All contentions of the parties on merits are kept open.

(iii) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)